



JENNIFER M. GRANHOLM  
GOVERNOR

STATE OF MICHIGAN  
OFFICE OF THE GOVERNOR  
LANSING

JOHN D. CHERRY, JR.  
LT. GOVERNOR

**EXECUTIVE DIRECTIVE  
No. 2005 – 6**

**AMENDMENT OF EXECUTIVE DIRECTIVE No. 2004 – 3**

**PROCUREMENT OF GOODS AND SERVICES AND  
PROTECTION OF MICHIGAN JOBS AND JOBS IN THE UNITED STATES**

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, under Section 8 of Article V of the Michigan Constitution of 1963, each principal department of state government is under the supervision of the Governor unless otherwise provided by the Constitution;

WHEREAS, under Section 8 of Article V of the Michigan Constitution of 1963, the Governor is responsible to take care that the laws be faithfully executed;

WHEREAS, the State of Michigan must do everything possible to ensure that its purchasing decisions encourage the creation and retention of jobs in the United States of America and especially in the State of Michigan;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, pursuant to the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, direct the following:

Effective October 1, 2005, Executive Directive 2004-3 is amended to read as follows:

**EXECUTIVE DIRECTIVE No. 2004 – 3**

**PROCUREMENT OF GOODS AND SERVICES AND  
PROTECTION OF MICHIGAN JOBS AND JOBS IN THE UNITED STATES**

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, under Section 8 of Article V of the Michigan Constitution of 1963, each principal department of state government is under the supervision of the Governor unless otherwise provided by the Constitution;

WHEREAS, under Section 8 of Article V of the Michigan Constitution of 1963, the Governor is responsible to take care that the laws be faithfully executed;

WHEREAS, under Section 551 of the Management and Budget Act, 1994 PA 431 ("DMB Act"), MCL 18.1551, the Governor shall inquire into the administration of the DMB Act;

WHEREAS, under Section 261 of the DMB Act, MCL 18.1261, the Department of Management and Budget must provide for the purchase of, the contracting for, and the providing of supplies, materials, services, insurance, utilities, third party financing, equipment, printing, and all other items as needed by state agencies;

WHEREAS, under Section 261 of the DMB Act, MCL 18.1261, the Department of Management and Budget utilizes competitive bidding to procure goods and services, unless the Department determines that another procurement method is in the state's best interests;

WHEREAS, under Section 261 of the DMB Act, MCL 18.1261, the Department of Management and Budget makes all discretionary decisions concerning the solicitation, award, amendment, cancellation, and appeal of state contracts;

WHEREAS, under Section 261 of the DMB Act, MCL 18.1261, in all purchases made by the Department of Management and Budget, all other things being equal, preference must be given to goods manufactured or services offered by Michigan-based firms, if consistent with federal statutes;

WHEREAS, under Section 204 of the DMB Act, MCL 18.1204, the Department of Management and Budget must develop and implement standardized risk management policies, practices, and procedures for all state agencies;

WHEREAS, in Section 209 of 2004 PA 327, the Michigan Legislature has expressed its intent that state appropriated funds shall not be used for the purchase of foreign goods or services if competitively priced American goods or services of comparable quality are available;

WHEREAS, job security and job growth are essential to the economic security of the United States and its citizens, including those in Michigan;

WHEREAS, the State of Michigan cannot attract and retain businesses, strengthen our workforce, or support vibrant cities and technology if state and federal policies have the effect of transferring Michigan jobs or other American jobs overseas;

WHEREAS, the federal government recently recognized the detrimental effects of relocating work performed under government contracts outside the United States by enacting Section 647(e) of the federal Consolidated Appropriations Act, 2004, Public Law 108-199, which prohibits the performance of federal government contract work by a contractor "at a location outside the United States except to the extent that such activity or function was previously performed by Federal Government employees outside the United States";

WHEREAS, the State of Michigan must do everything possible to discourage the relocation of Michigan jobs and American jobs overseas;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, pursuant to the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law direct the following:

**I. PREFERENCES FOR MICHIGAN-BASED JOB PROVIDERS IN THE PROCUREMENT OF GOODS AND SERVICES**

A. The Director of the Department of Management and Budget shall adopt policies and procedures necessary for compliance by the Department of Management and Budget, other state departments and agencies, and state vendors and subcontractors, with the requirement under Subsection (1) of Section 261 of the DMB Act, MCL 181.261, to provide a purchasing preference for goods manufactured or services offered by Michigan-based firms.

B. The Department of Management and Budget and the Department of Treasury shall adopt policies and procedures necessary to grant a reciprocal preference in favor of a bid for a state contract submitted by a Michigan-based business, as provided under Section 268 of the DMB Act, MCL 18.1268, including all of the following:

1. Implementation of a process by the Department of Management and Budget to allow a Michigan-based job provider with a significant business presence in this state to apply for certification as a Michigan business consistent with Subsections (1) and (2) of Section 268 of the DMB Act, MCL 18.1268.

2. Dissemination by the Department of Management and Budget of information about the certification process for Michigan-based job providers and eligibility for the reciprocal preference.

3. Development of procedures by the Department of Treasury allowing a Michigan-based job provider seeking certification as a Michigan-based business to authorize the release of tax information necessary to verify the job provider's status as a Michigan-based business under Subsections (1) and (2) of Section 268 of the DMB Act, MCL 18.1268, and to provide for the disclosure of that information by the Department of Treasury to the Department of Management and Budget or other appropriate departments or agencies, in accordance with Section 28 of 1941 PA 122, MCL 205.28.

4. Modification of bid documents used by the Department of Management and Budget to allow a job provider certified as a Michigan-based business to indicate its status as a certified Michigan-based business and to require a bidder not certified as a Michigan-based business to indicate the state in which the uncertified business maintains its principal place of business.

5. Creation and maintenance of a list by the Department of Management and Budget of other states that grant a preference to in-state bidders and the extent of the preference, as required by Subsection (6) of Section 268 of the DMB Act, MCL 18.1268.

6. Compliance by the Department of Management and Budget with the legislative mandate under Subsection (5) of Section 268 of the DMB Act, MCL 18.1268, to prefer a bid from a certified Michigan business in the same manner in which an out-of-state bidder would be preferred by its home state, when the low bid for a state procurement exceeds \$100,000.00 and is from a business located in a state that applies a preference law against out-of-state businesses.

7. Adoption of procedures by the Department of Management and Budget to enforce the statutory prohibition against fraudulent certification as a Michigan business under Subsections (8) and (9) of Section 268 of the DMB Act, MCL 18.1268.

8. Recommendation to the Governor and the Legislature of any necessary changes to the reciprocal preference provisions of Section 268 of the DMB Act, MCL 18.1268.

## **II. PREFERENCES FOR AMERICAN-BASED JOB PROVIDERS IN THE PROCUREMENT OF GOODS AND SERVICES**

A. Consistent with state and federal law, the Director of the Department of Management and Budget shall adopt policies and procedures necessary for compliance by the Department of Management and Budget, other state departments and agencies, and state vendors and subcontractors, to ensure that if a contract is not awarded to a Michigan-based firm pursuant to Section I.A or I.B, or if Michigan goods or services are not available, the Department of Management and

Budget shall next consider goods manufactured or produced in the United States or services offered by United States-based firms.

B. Consistent with state and federal law, the Director of the Department of Management and Budget shall adopt policies and procedures to assure that the Department of Management and Budget, other state departments and agencies, and state vendors and subcontractors do not use state appropriated funds for the purchase of foreign goods or services if competitively priced American goods or services of comparable quality are available.

### **III. MAKING STATE PROCUREMENT DECISIONS IN THE BEST INTERESTS OF THE STATE OF MICHIGAN, MICHIGAN WORKERS AND MICHIGAN JOB PROVIDERS**

A. Consistent with state and federal law, in determining whether the purchase, contracting for, providing of supplies, materials, services, insurance, utilities, third party financing, equipment, printing, and other items needed by state departments or agencies is in the best interests of this state, and in making all discretionary decisions concerning the solicitation, award, amendment, cancellation, or appeal of state contracts, the Department of Management and Budget shall consider all of the following:

1. Whether a proposal by a vendor to provide services to this state using employees, contractors, subcontractors, or other individuals who are not citizens of the United States, legal resident aliens, or individuals with a valid visa would be detrimental to the State of Michigan, its residents, or the state's economy.

2. Whether a proposal by a vendor to provide services to this state from a location outside of this state or the United States would be detrimental to the State of Michigan, its residents, or the state's economy.

3. Whether a proposal by a vendor to provide goods to this state produced outside of this state or the United States would be detrimental to the State of Michigan, its residents, or the state's economy.

4. Whether the acquisition of goods or services from a vendor that is an expatriated business entity located in a tax haven country or an affiliate of an expatriated business entity located in a tax haven country would be detrimental to the State of Michigan, its residents, or the state's economy.

5. Whether the provision of services to this state at a location outside of this state or the United States would be detrimental to the privacy interests of Michigan residents, or risk the disclosure of personal information of Michigan residents, such as social security, financial, or medical data.

6. Whether a proposal by a vendor to provide services to this state from a location outside of this state or the United States would constitute undue risk under a risk management policy, practice, or procedure adopted by the Department of Management and Budget under Section 204 of the DMB Act, MCL 18.1204.

7. Whether a proposal by a vendor to provide goods to this state produced outside of this state or the United States would constitute undue risk under a risk management policy, practice, or procedure adopted by the Department of Management and Budget under Section 204 of the DMB Act, MCL 18.1204.

8. As used in this Section III:

a. "Expatriated business entity" means a corporation or an affiliate of the corporation incorporated in a tax haven country after September 11, 2001, but with the United States as the principal market for the public trading of the corporation's stock, as determined by the Director of the Department of Management and Budget.

b. "Tax haven country" means each of the following: Barbados, Bermuda, British Virgin Islands, Cayman Islands, Commonwealth of the Bahamas, Cyprus, Gibraltar, Isle of Man, the Principality of Liechtenstein, the Principality of Monaco, and the Republic of the Seychelles.

#### **IV. MAKING STATE PROCUREMENT DECISIONS IN THE BEST INTERESTS OF THE STATE OF MICHIGAN, AMERICAN WORKERS, AND AMERICAN JOB PROVIDERS**

A. Consistent with state and federal law, in determining whether the purchase, contracting for, providing of supplies, materials, services, insurance, utilities, third party financing, equipment, printing, and other items needed by state departments or agencies is in the best interests of this state, and in making all discretionary decisions concerning the solicitation, award, amendment, cancellation, or appeal of state contracts, the Department of Management and Budget after first considering the requirements under Section III, the Department of Management and Budget shall next consider all of the following:

1. Whether a proposal by a vendor to provide services to this state using employees, contractors, subcontractors, or other individuals who are not citizens of the United States, legal resident aliens, or individuals with a valid visa would be detrimental to the State of Michigan or its residents by negatively impacting the economy of the United States.

2. Whether a proposal by a vendor to provide goods to this state produced outside of this state or the United States would be detrimental to the State of Michigan or its residents by negatively impacting the economy of the United States.

3. Whether the acquisition of goods or services from a vendor that is an expatriated business entity located in a tax haven country or an affiliate of an expatriated business entity located in a tax haven country would be detrimental to the State of Michigan or its residents by negatively impacting the economy of the United States.

4. As used in this Section IV:

a. "Expatriated business entity" means a corporation or an affiliate of the corporation incorporated in a tax haven country after September 11, 2001, but with the United States as the principal market for the public trading of the corporation's stock, as determined by the Director of the Department of Management and Budget.

b. "Tax haven country" means each of the following: Barbados, Bermuda, British Virgin Islands, Cayman Islands, Commonwealth of the Bahamas, Cyprus, Gibraltar, Isle of Man, the Principality of Liechtenstein, the Principality of Monaco, and the Republic of the Seychelles.

## **V. VENDOR DISCLOSURE**

A. The Department of Management and Budget shall collect information from vendors necessary to comply with the requirements of this Directive, as determined by the Department.

B. The Department of Management and Budget may require vendors to provide any of the following:

1. Information relating to the location of work performed under a state contract by the vendor and any subcontractors, employees, or other persons performing a state contract.

2. Information regarding the corporate structure and location of corporate employees and activities of the vendor, its affiliates, or any subcontractors.

3. Notice of the relocation of the vendor, employees of the vendor, subcontractors of the vendor, or other persons performing services under a state contract outside of the State of Michigan or the United States.

C. The Department of Management and Budget may require that any vendor or subcontractor providing call or contact center services to the State of Michigan disclose to inbound callers the location from which the call or contact center services are being provided.

## **VI. DEBARMENT OF VENDORS WHEN IN BEST INTEREST OF STATE OF MICHIGAN**

A. The Director of the Department of Management and Budget may initiate proceedings to debar a vendor from participation in the bid process and from contract award as authorized under Section 264 of the DMB Act, MCL 18.1264, and Executive Order 2003-1, if the Director determines that any of the following demonstrates the vendor is unable to perform responsibly, or demonstrates a lack of integrity that could jeopardize the state's interest if the state were to contract with the vendor:

1. The vendor proposes to provide services to this state using employees, contractors, subcontractors, or other individuals who are not citizens of the United States, legal resident aliens, or individuals with a valid visa.

2. The vendor proposes to provide services to this state from a location outside of the United States.

3. The vendor is an expatriated business entity located in a tax haven country or an affiliate of an expatriated business entity located in a tax haven country.

4. A vendor seeking to provide goods or services refuses to disclose any of the following:

a. Information necessary for the Department of Management and Budget to determine whether the vendor or any subcontractor of the vendor proposes to provide services to this state using employees, contractors, subcontractors, or other individuals who are not citizens of the United States, legal resident aliens, or individuals with a valid visa.

b. Information necessary for the Department of Management and Budget to determine the identity and location of any proposed subcontractors and the location for the performance of any services proposed to be provided by the vendor or a subcontractor.

c. Information necessary for the Department of Management and Budget to determine whether a proposed vendor or any of its subcontractors are an expatriated business entity located in a tax haven country or an affiliate of an expatriated business entity located in a tax haven country.

## **VII. ENFORCEMENT BY STATE ADMINISTRATIVE BOARD**

A. In exercising general supervisory control over the functions and activities of all administrative departments, boards, commissioners and officers of the state, and of all state institutions as required under Section 3 of 1921 PA 2,



MCL 17.3, the State Administrative Board shall monitor compliance with the requirements of this Directive.

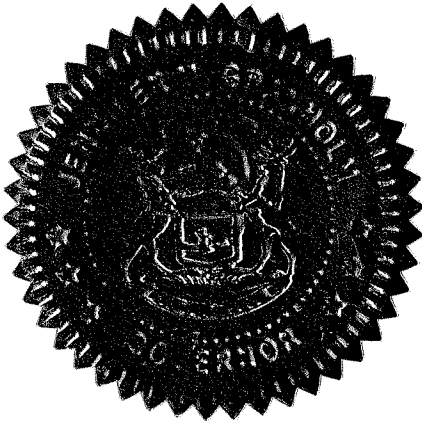
B. Reports of violation of the requirements of this Directive shall be transmitted to the State Administrative Board.

C. The State Administrative Board may take action to enforce the requirements of this Directive as authorized under 1921 PA 2, MCL 17.1 to 17.11.

All departments and agencies shall assist the Department of Management and Budget, as necessary in implementing this Directive.

The assistance of all state departments and agencies in implementing this Directive and the continued hard work of state employees is appreciated.

Given under my hand this 1st day of  
September, in the year of our Lord, two  
thousand and five.



  
JENNIFER M. GRANHOLM  
GOVERNOR